

The Best and Worst of State Tax Administration

COST Scorecard on Tax Appeals & Procedural Requirements

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EXECUTIVE SUMMARY

The Council On State Taxation (COST) has long monitored and commented on state tax appeals processes and administrative practices. Part of that effort has resulted in the regular publication of a Scorecard ranking the states on their adoption of procedural practices which impact the perceived fairness of the rules and requirements for state tax administration and appeal of state tax matters. Why are these issues so important? Although compliance with state tax statutes and regulations is subject to audit scrutiny, the percentage of taxpayers actually audited is small. As a result, our federal and state tax systems are premised, to a great degree, on voluntary compliance. It is a common truth that taxpayers will more fully and willingly comply with a tax system they perceive to be balanced, fair, and effective. Taxpayers operating in a system they perceive as oppressive, unfair, or otherwise biased are less likely to voluntarily comply. The clear message to state legislatures is that they must be sensitive to the compliance implications and competitiveness concerns created by poor tax administrative rules and ineffective tax appeal systems.

The COST Scorecard seeks to objectively evaluate state statutes and rules that govern the degree of taxpayer access to an independent appeals process, and state treatment of selected procedural elements that impact taxpayers' perceptions of fairness and efficiency. For these purposes, the essential elements of an effective and independent state tax appeals process are as follows:

- The appeals forum must be truly independent;
- Taxpayers must not be forced to pay or post a bond prior to an independent hearing and resolution of a dispute;
- The record for further appeals must be established before an independent body; and
- The arbiter at the hearing must be well-versed in the intricacies of state tax laws and concepts.

The procedural elements evaluated in this Scorecard consider whether the state has adopted:

The Council On State Taxation (COST) is the premier state tax organization representing taxpayers. COST is a nonprofit trade association consisting of nearly 600 multistate corporations engaged in interstate and international business. COST's mission is to preserve and promote equitable and nondiscriminatory state and local taxation of multi-jurisdictional business entities.

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- Even-handed statutes of limitations for refunds and assessments;
- Equalized interest rates on refunds and assessments;
- Due dates for corporate income tax returns at least 30 days beyond the federal due date with an automatic extension of the state return due date based on the federal extension;
- Adequate time to file a protest before an independent dispute forum;
- Reasonable and clearly defined procedures for filing amended state income/franchise tax returns following an adjustment to a taxpayer's federal corporate tax liability; and
- Any additional ineffective, burdensome or inequitable practices, such as contingent fee audits, duplicative local revenue departments, use of outside counsel to litigate cases, or retroactive statutes, penalties and/or interest.

Top & Bottom Ranked States

2010 Top-Ranked States

State	Grade
Alaska	A
Delaware	A-
Idaho	A-
Minnesota	A-
Montana	A-
Virginia	A-
Arizona	B+
Mississippi	B+

2010 Bottom-Ranked States

State	Grade
California	D-
Louisiana	D
Florida	D
Rhode Island	D
Alabama	D
Illinois	D
New Mexico	D
Pennsylvania	D

INTRODUCTION

This Scorecard is the fourth published effort by the Council On State Taxation (COST) to objectively analyze state treatment of significant procedural and appeal issues that reflect whether states provide fair, efficient, and customer-focused tax administration. This Scorecard expands upon and updates the 2001, 2004 and 2007 versions¹ and sets the stage for important policy discussions in states where certain procedural practices either create inefficiencies for business and government, or focus on preservation of the fisc without regard to effective tax administration. As with previous versions, this year's Scorecard is designed to provide an objective counterpart to the periodic subjective surveys presented by *CFO Magazine* in May, 2009 and prior years². While the COST Scorecard evaluates each state's statutory and regulatory scheme against objective criteria, the *CFO Magazine* surveys asked corporate tax executives questions regarding their subjective views of the states' tax environments.

To properly gauge taxpayer responses to specific state administrative systems, the approach taken by COST (assessing objective criteria) and the approach taken by *CFO Magazine* (compiling subjective taxpayer responses), should be viewed in conjunction. Taken separately, each approach may be fairly criticized. Analyzing a set of objective criteria creates a useful

benchmark for comparison of administrative practices from state to state, but fails to recognize incompetent administration and overzealous personnel operating within a sound statutory framework. Conversely, an evaluation of taxpayer responses to subjective questions might mask a deficient statutory framework by recognizing only the goodwill engendered by fair and competent administrative officials.

The differences in the two approaches are reflected in the respective state rankings of the 2009 *CFO Magazine* survey and the COST Scorecard. In response to *CFO Magazine's* request for the "overall impression of the tax environment in each state," survey respondents ranked California, Massachusetts, New Jersey, New York and Michigan as "very unfair and unpredictable" and Wyoming, Nevada, Delaware, South Dakota and Utah as the most "fair and predictable." By contrast, of those states, only California was ranked by COST as among the worst five state tax administration regimes, while only two of COST's "best" states, Delaware and Wyoming, were included among *CFO Magazine's* five most fair and predictable.

The difficulty of evaluating subjective responses, of course, is that it is often impossible to discern *why* a specific response may be forthcoming. For example, the five most fair and predictable states in the CFO survey are relatively small states, and four of the five (save Utah) lack a broad-based state corporate income tax entirely. Such results suggest that a favorable response in the *CFO Magazine* survey may result from the absence of a negative experience with that state's tax administration, rather than satisfaction with elements of the status quo. In addition, there is some indication that the subjective responses are also influenced by negative perceptions of that state generally. The COST survey notes that New York and New Jersey both have fair and effective independent tax tribunals, and indeed, there has been little call by taxpayers to reform the appeals systems in those states. However, the *CFO Magazine* survey, in assessing the independence of state tax appeals systems, notes that New York and New Jersey are perceived to be among the top five "least independent" states. This tainted response may be partially explained by the fact that of the twelve categories examined in the CFO survey, New York and New Jersey each ranked among the top five "worst" states in eleven of the twelve categories, and among the top ten worst in *every* category. The implication of this type of finding is that an effective fix may require more than statutory changes.

THE COST SCORECARD

The COST Scorecard evaluates state tax appeals processes by asking two questions – 1) whether the appeals system is truly independent, and 2) whether a taxpayer must prepay the disputed tax or assessment prior to an opportunity for an independent hearing. Two other considerations are also paramount, however, in evaluating appeals systems, and are also addressed in these two columns of the Scorecard: 3) whether the tribunal's judges are required to have experience in evaluating the complexities of state tax law, and 4) whether the taxpayer has the opportunity for a "hearing of

record" (i.e., trial *de novo*) at an independent tribunal that would form the basis of further appeals. These four requirements mirror the essential components of the *Model State Administrative Tax Tribunal Act* developed by the State and Local Tax Committee of the American Bar Association which has been proposed, with COST support, in a number of states. It is COST's view that these elements, at a minimum, should be a part of any state's tax appeals process to achieve fairness, efficiency and a customer-focused tax environment.

The procedural elements evaluated in this Scorecard consider whether the state has adopted:

- Even-handed statutes of limitations for refunds and assessments;
- Equalized interest rates on refunds and assessments;
- Due dates for corporate income tax returns at least 30 days beyond the federal due date with an automatic extension of the state return due date based on the federal extension;
- Adequate time to file a protest before an independent dispute forum;
- Reasonable and clearly defined procedures for filing amended state income/franchise tax returns following an adjustment to a taxpayer's federal corporate tax liability; and
- Any additional ineffective, burdensome or inequitable practices, such as contingent fee audits, duplicative local revenue departments, use of outside counsel to litigate cases, or retroactive penalties and interest.

By focusing on objective criteria, the 2010 Scorecard gives states the opportunity to enact corrective legislation as a means of improving business climates. Indeed, since the publication of the 2007 COST Scorecard, several states have taken steps to improve their administrative and appeals processes. North Carolina and Texas, for example, have taken productive first steps towards improved tax dispute appeal forums, and Mississippi has moved upwards on the Scorecard as a result of favorable legislation impacting its appeals system and procedural issues.³ North Carolina's changes have improved its overall grade from a D- in 2007 to a B- in the current survey. Mississippi has improved from a C state to a B+ state. It is our hope that publication of this Scorecard will spur policymakers towards additional improvements in the rules for tax administration and the independent appeal of tax matters in all states.

Grading the Survey

Point totals for the Scorecard are determined by assessing states 0 to 3 points for the two categories that evaluate state appeals systems, and 0 to 2 points for each procedural practice. Point totals for each category are increased based on the severity of the state's deviation from COST's recommendations for achieving a balanced, fair and effective tax system. Specific scores are based on COST's determination of the relative importance of specific issues to business taxpayers, and the presence or absence of mitigating and/or aggravating circumstances. In general, one point was assigned to the "Other Issues" category for each issue

found to impact a state's fair and efficient tax administration. The final grades are based on the following scale:

Overall Score

A	0 to 3 points
B	4 to 7 points
C	8 to 10 points
D	11 to 13 points
F	More than 13 points

Summary Results

The Summary Table on Page 4 ranks each state's statutes and rules in the areas described above. Although much progress has been made over the last 25 years, numerous states are significantly behind the curve in providing fair and efficient tax administration and appeals procedures. Detailed survey data for each state is provided beginning on Table I on page 8.

BAROMETERS OF STATE TAX ADMINISTRATION

Fair, Efficient, Independent Appeals

Foremost in good tax administration is a fair and efficient tax appeals system. States with fair and efficient tax appeals systems share four essential elements:

- An independent tax tribunal;
- Tribunal judges with specific training and experience in tax law;
- No prepayment requirement (or bond posting) for taxpayers disputing a tax before receiving an independent, impartial hearing; and
- The record for further appeals is established before an independent body.

A state's ability to recognize the potential for error or bias in its tax department determinations and to provide taxpayers access to an independent appeals tribunal is the most important indicator of the state's treatment of its tax customers.

Independent Tribunals: The tax court or tribunal must be truly independent. It must not be located within or report, directly or indirectly, to the department of revenue or to any subordinate executive agency. Without independence, the *appearance* of objectivity is simply not present. That perception, regardless of its accuracy, necessarily detracts from even exemplary personnel and work product of the adjudicative body. Independent tribunals are less likely to be perceived as driven by concerns over revenue collection, upholding departmental policies, or offending departmental decision-makers.

Today almost half of the states provide an independent appeals process specifically dedicated to hearing tax cases. Although the structure and rules may differ from state to state, taxpayers in these states are able to establish a record for appeal in an independent adjudicative body, before judges well-versed in tax matters. The ability to reach an independent tribunal, non-judicial or judicial, without prepayment is another key factor of a fair and efficient appeals process. Currently, almost two-

Table I

	Independent Dispute Forum	Pay- to- Play	Even- handed Statute of Lmnts.	Equal Interest Rates	Ample Protest Period	Return Due Date/ Automatic Extension	Filing of IRS Changes	Other Issues	Total Points	Overall Grade
AL	2	2	0	0	2	1	1	3	11	D
AK	0	1	0	0	0	0	1	0	2	A
AZ	0	0	0	0	1	0	2	1	4	B+
AR	3	2	1	0	0	2	2	0	10	C-
CA	3	2	1	2	1	1	0	3	13	D-
CO	3	2	0	1	1	0	1	2	10	C-
CT	1	0	0	2	0	2	2	0	7	B-
DE	1	0	0	0	0	1	1	0	3	A-
DC	1	1	0	2	1	2	1	0	8	C+
FL	3	2	0	1	0	2	2	2	12	D
GA	3	2	0	0	1	1	1	2	10	C-
HI	1	1	0	2	1	1	2	0	8	C+
ID	1	1	0	0	0	0	1	0	3	A-
IL	3	2	0	1	0	1	2	2	11	D
IN	0	1	0	1	1	0	1	2	6	B
IA	3	0	0	0	0	0	2	0	5	B
KS	0	1	2	1	0	0	1	2	7	B-
KY	1	1	1	0	1	0	1	1	6	B
LA	2	2	0	2	1	0	2	3	12	D
ME	1	0	1	1	1	0	2	0	6	B
MD	0	0	0	0	1	2	2	1	6	B
MA	0	0	1	2	0	2	1	0	6	B
MI	0	0	1	1	1	1	1	0	5	B
MN	0	0	0	0	0	1	1	1	3	A-
MS	0	1	0	0	0	1	2	0	4	B+
MO	1	0	0	1	1	0	1	2	6	B
MT	0	0	0	0	1	0	2	0	3	A-
NE	3	0	0	0	0	1	1	1	6	B
NV	3	2	0	2	1	n/a	n/a	0	8	C+
NH	0	0	1	2	0	1	0	1	5	B
NJ	0	0	0	2	0	1	1	1	5	B
NM	3	2	1	1	1	1	1	1	11	D
NY	0	1	0	2	0	2	2	1	8	C+
NC	1	1	0	0	1	1	1	2	7	B-
ND	3	0	1	1	1	0	1	0	7	B-
OH	0	0	0	0	0	2	1	2	5	B
OK	3	2	0	1	0	2	1	1	10	C-
OR	0	1	0	0	1	0	2	1	5	B
PA	3	1	1	2	0	1	2	1	11	D
RI	3	2	0	2	1	2	2	0	12	D
SC	1	1	0	2	0	1	1	0	6	B
SD	3	2	0	0	0	1	2	0	8	C+
TN	3	2	0	0	0	0	2	1	8	C+
TX	2	2	0	1	1	1	2	1	10	C-
UT	2	1	0	0	1	0	2	0	6	B
VT	3	1	0	0	0	2	2	0	8	C+
VA	3	0	0	0	0	0	0	0	3	A-
WA	2	2	0	0	1	n/a	n/a	2	7	B-
WV	0	1	0	2	0	1	2	0	6	B
WI	0	0	0	2	0	1	1	2	6	B
WY	0	1	0	2	2	n/a	n/a	0	5	B

thirds of states offer this opportunity with a non-judicial forum at a minimum, often with both judicial and non-judicial review. In addition, many tax dispute systems are designed to allow taxpayers and the state adequate opportunity to meet and discuss settlement opportunities before incurring the hazards and costs of litigation.

States without an independent tax tribunal or similar appeals system limit a taxpayer's real ability to challenge a state tax assessment. States that do not offer an independent tribunal, and/or force taxpayers to appeal based on a record established at a non-independent proceeding, are less attractive to businesses and are more likely to see taxpayers avoiding potential problems with the state by engaging in structural tax planning to minimize potential liabilities in the state.

Trained Judges: Tax tribunal judges must be specifically trained as tax attorneys, and the tribunal should be dedicated solely to deciding tax issues. The tribunal (or court) should be structured to accommodate a range of disputes from less complex tax issues, such as those arising from personal income tax matters, to highly complex corporate tax disputes. The tremendous growth and complexity in the body of tax law and the nature of our multi-jurisdictional economy makes this consideration paramount. Judges not trained in tax law are less able to decide complex corporate tax cases on their merit and a perception exists (rightly or wrongly) that the *revenue impact* of these complex cases too often helps guide decision-makers through the fog of complicated tax statutes, regulations, and precedent. That perception reflects poorly on a state's business climate and reputation as a fair and competitive place to do business.

No Prepayment Required: Finally, taxpayers should not be required to post bond or pay a disputed tax before an initial hearing. It is unfathomable that taxpayers may still be denied a fair hearing before being deprived of property (*i.e.*, disputed taxes). It is inherently inequitable to force a corporate taxpayer to pay a tax assessment, often based on the untested assertions of a single auditor or audit team, without the benefit of a hearing and the ability to establish a record before an independent trier of fact. Free access to an independent hearing without having one's property confiscated by the law is especially important during difficult state economic climates—once tax money is paid into the system, it is often difficult or impossible to wrest a refund from the state, even after disputes are resolved in the taxpayer's favor. There are three degrees of state prepayment requirements.

- **Full "Pay to Play":** Since Massachusetts and Hawaii eliminated their full "pay-to-play" requirements several years ago, we are unaware of any state that requires taxpayers to pay an assessed tax upon receipt of a notice of assessment, without an opportunity to contest that assessment before even a non-independent tax forum, such as the tax commissioner or an administrative hearing officer. Such systems were the scourge of fair tax administration; their elimination represents a significant step forward in fairness.
- **Partial "Pay to Play":** While no state currently requires payment of a disputed tax prior to the administrative ap-

peals process, some states still require payment of the tax or posting of a bond to obtain access to the circuit or district court level in the case of an adverse decision by an independent non-judicial body, or if the taxpayer elects to bypass the non-judicial forum and proceed directly to the circuit or district court level. In those states, taxpayers are at least granted a hearing before a non-judicial tax tribunal, an administrative hearing officer, or the state tax commissioner before such payment is extracted. The perception of unfairness is more acute, of course, in partial pay-to-play states where the initial hearing is before an adjudicatory body that is not independent of the state's DOR.

- **No "Pay to Play":** In some states taxpayers do not have to pay a disputed tax until all appeals are exhausted. These systems are perceived to be the most fair – in large part because taxpayers are not held hostage by the jurisdiction in possession of the taxpayer's funds.

Jeopardy Situations Justify Prepayment: We do not question the necessity of state jeopardy assessment and collection authority. If a state department of revenue feels that a particular tax assessment is in jeopardy based on the facts and circumstances before it, it should certainly issue a jeopardy assessment on that amount. In those circumstances states need the flexibility to move quickly and should do so as long as minimum due process protections are afforded. Such assessments are a legitimate means of protecting the state fisc. However, the jeopardy assessments should *only* be used in extreme circumstances and the burden of proving that the assessment is in jeopardy should fall upon the state. It would be an extremely unusual circumstance for a state to find it necessary to impose a jeopardy assessment on a publicly traded company.

Basic Procedural Provisions Reflecting Good Tax Administration

In addition to an independent tax tribunal accessible without prepayment, state tax administration should include a number of fundamental components necessary to a fair, efficient, and customer-focused state tax system. The following are basic procedural elements that should be included in every state's law:

Even-Handed Statutes of Limitations: Statutes of limitation should apply even-handedly to both assessments and refund claims. Forcing taxpayers to meet one statute to apply for a refund while granting the tax administrator additional time to issue an assessment is unfair and should not be tolerated in a voluntary tax system. A three-year statute of limitations for assessments should be accompanied by a three-year statute of limitations for refund claims. States with unusual (biased) rules or with unequal statutes of limitations to report federal adjustments are also noted. In addition, claims for refund based on constitutional challenges should not be singled out for discriminatory treatment by shortening the statute of limitations.

Equalized Interest Rates: Interest rates should apply equally to both assessments and refund claims. Failure to equalize interest rates diminishes the value of the taxpayer's remedy of recovering tax monies to which it is legally en-

titled. Interest rates are meant to compensate for the lost time-value of money and should apply equally to both parties. The date from which interest begins to run may also be important. Because states levy interest from the due date of the return, taxpayers should receive interest from the date of the overpayment of the tax on an original return, although no interest is acceptable if paid within a reasonable time period, say 60 days, to allow state processing of the payment. For separate refund claims, interest should be paid from the date of overpayment of the tax – typically the due date of the original return – and not the date of the filing of the refund claim. Refunds and liabilities for the same taxpayer should also offset each other in calculating the amount of interest and penalty due.

Protest Periods: The first step in the administrative process in most states is the issuance of an assessment with notification of a right to protest. That protest period should be at least 60 days and preferably 90 days. The American Bar Association's *Model State Administrative Tax Tribunal Act* recommends a 90-day protest period. Any protest period shorter than 60 days is unreasonable and could jeopardize a taxpayer's ability to fully respond to a proposed assessment. A notice period of 60 days or longer is of increasing importance in a global economy where taxpayers are working to comply with the laws of numerous jurisdictions.

Many states have increased the number of days to submit a protest as compared to prior studies. Even so, numerous states still offer less than 60 days to file protests. While all of the states now generally offer at least 30 days to protest a tax assessment, COST hopes to see all states grant at least 60 days and preferably 90 days.

Return Due Date and Automatic Extensions: The state's corporate income tax return due date should be at least 30 days after the federal tax return due date, or the state's extended due date should be at least 30 days after the federal extended due date. Further, the state's corporate income tax return due date should be automatically extended simply by obtaining a federal extension. By extending state due dates to this point, state tax administrators allow taxpayers to file correct returns based on complete federal return information. Although corporate taxpayers often file a single consolidated federal return, the adjustments necessary to generate the multitude of state tax returns are complex and time-consuming. A minimum of 30 days beyond the extended federal due date is needed to complete these adjustments. To ease administrative burdens, an automatic state extension should only require attaching a copy of the extended federal return with the state return to qualify.

State Reporting Requirements for Federal Tax Changes: For a large multistate company and subsidiaries, an adjustment or charge to a prior federal return can trigger hundreds, if not thousands, of amended return requirements at the state level. Many states have inconsistent and unreasonable requirements for taxpayers attempting to report federal tax changes from prior years to the states. Such circumstances may arise upon the final resolution of a legal dispute on the federal return or upon conclusion of a multiple-year federal

audit that impacts state returns, usually after state statutes of limitation have expired. Because businesses typically operate in multiple jurisdictions, great confusion arises over when notice of a federal change must be filed with a state (final determination), and how it is to be filed (specialized forms are often hard to obtain or difficult to complete). In many states, the time period allowed to file the numerous reports required to reflect a federal change is also far too short.

To address these concerns, it is important that states clearly define, by regulation or statute, what constitutes a "final determination" that will trigger a taxpayer's requirement to report the change to affected states. Taxpayers should be provided at least six months (or 180 days) to file an amended return or worksheet to the state to notify it of the changes. Finally, if the normal statute of limitations for the issuance of a tax assessment has expired, the only tax issues subject to adjustment when a taxpayer reports a federal tax change should be the federal tax changes. The statute of limitations should not be reopened for issues beyond the scope of the federal tax changes. The following are essential elements of a state reporting procedure for changes made to a taxpayer's federal income tax return:

- **Final Determination:** All states imposing a corporate income tax require a taxpayer to report changes in federal taxable income to the state. In the majority of states the requirement is triggered by when a "final determination" is made regarding the federal income tax return (*e.g.*, issuance of a Revenue Agent's Report). However, some states have no such definition. Although the Multistate Tax Commission promulgated a model uniform statute for reporting federal tax adjustments in August, 2003, the states are not using a uniform definition as to when a federal tax change constitutes a "final determination" to be reported to the state.⁴ This is unfortunate because it unnecessarily creates compliance problems and wrongfully subjects taxpayers to concomitant penalties and interest for noncompliance. COST suggests the following "best practice" as a workable definition, primarily based on the statutory definition of "final determination" used by New Hampshire.

"A 'final determination' is deemed to occur when the latest of any of the following activities occurs with respect to a federal taxable year:

- (1) The taxpayer has made a payment of any additional income tax liability resulting from a federal audit, the taxpayer has not filed a petition for redetermination or claim for refund for the portions of the audit for which payment was made and the time in which to file such petition or claim has lapsed.
- (2) The taxpayer has received a refund from the U.S. Treasury that resulted from a federal audit.
- (3) The taxpayer has signed a federal Form 870-AD or other IRS form consenting to the deficiency or consenting to any over-assessment.
- (4) The taxpayer's time for filing a petition for redetermination with the U.S. Tax Court has expired.

- (5) The taxpayer and the IRS enter into a closing agreement.
- (6) A decision from the U.S. Tax Court, district court, court of appeals, Court of Claims, or Supreme Court becomes final.”
- **Time Period for Reporting:** Taxpayers face a variety of due dates with respect to reporting IRS adjustments, from 30 days to 2 years. COST recommends at least 180 days to report IRS adjustments to states, with the ideal time frame one year or greater. A minimum of 180 days (or six months) is required to allow multijurisdictional taxpayers adequate time to report federal tax changes to the state and local level. Presently, only ten states allow a reporting period of 180 days or more. Kudos to Ohio, Oklahoma and Virginia for allowing taxpayers one year to report such changes.
- **State Statutes Waived Only for Federal Tax Changes:** Some states allow every aspect of the state return to be open for adjustment following a change in federal income tax liability even though the state’s normal statute of limitations has expired. Other states have statutes that are not clear (and/or lack case law) to put the taxpayer on notice that only federal tax changes are open for audit when the state’s normal statute of limitations period has passed. When the normal time period for the state DOR to assess additional tax and a taxpayer to claim a refund has expired, only those items that are changed as a result of the federal income tax change should be open for adjustment (tax due and refund). This issue is reflected in the “other issues” category, discussed below.

Other Significant Procedural Issues

The 2010 Scorecard also includes an “Other Issues” column. In preparing the Scorecard we surveyed tax practitioners asking them to identify additional issues that impact fair and efficient tax administration in the state. In previous editions of the Scorecard many of these issues were noted but not taken into account for scoring purposes. This Scorecard assigns points (generally one point per issue) to those states identified as having negative practices; the adjustments are identified in the chart following this discussion. Adjustments were made based on, but not limited to, the following practices: independent local revenue departments which create disconformity and complexity; use of outside paid counsel to litigate tax matters (sometimes fees for these counsels are directly charged to taxpayers); the imposition of statutes on a retroactive basis, and/or the imposition of retroactive penalty and interest provisions. States should guard against utilizing these and similar unfair and burdensome practices.

DETAILED SURVEY DATA

The table beginning on page 8 provides detailed survey data for each state. At least one practitioner from each state and the revenue department (DOR) of each state were asked to review and offer corrections to the data. Where received, responses were integrated into the chart as appropriate to

reflect the current status of the law in each state. COST extends its gratitude to those practitioners and DOR employees who assisted in compiling the data necessary for this study. Note that certain exceptions to the general rules may exist but were not included. Further, we were not always able to reconcile the responses by in-state practitioners with the responses by the DOR; this demonstrates the lack of clarity surrounding some of the issues. Accordingly, this document is not intended to be used as a comprehensive listing of legal authority for the issues identified, and taxpayers are cautioned to research individual state laws.

Survey Questions for Practitioners and Administrators

1. Does the state have an even-handed statute of limitations for refunds and assessments?
2. Are the interest rates on assessments and refunds the same?
3. Does a taxpayer have at least 60 days to appeal an assessment?
4. For state taxes based on the taxpayer’s federal corporate income tax return, is the state return due at least 30 days after the federal tax return date?
5. Does a taxpayer automatically obtain an extension on filing its state tax return if the taxpayer has obtained a federal extension?
6. Does the state have an independent appeal forum dedicated to handling tax disputes (includes an administrative law judge if the ALJ’s decision cannot be overridden by the revenue department)?
7. Excluding jeopardy assessments, is prepayment or posting of a bond required to have an independent appeal forum hearing?
8. What constitutes a “final determination” when a taxpayer has to report a change to its federal tax liability to the state?
9. Do non-federal tax changes, such as a change of liability reported to another state, also have to be reported (e.g., another state changes the taxpayer’s apportionment)?
10. When do changes in the taxpayer’s federal tax liability have to be reported to the state, and can a taxpayer obtain an extension?
11. What type of return/form is required to report a change in a taxpayer’s federal tax liability to the state?
12. If the normal statute of limitations is closed for modifying the state tax return, is the revenue department limited to only making changes based on the federal tax changes?
13. What additional issues are impacting fair and efficient tax administration?⁵